secondarily liable, his administrator may recover the amount paid from the estate of the wife, (McCLAIN J. and DEEMER C. J., dissenting). *In re Skillman's Estate* and *Kelly* v. *Wilson,* (1910), — Iowa —, 125 N. W. 343.

The surviving husband was liable for the expenses of his wife's last sickness and funeral at common law. Such liability exists now without specific statutory provision. *Gould* v. *Moulahan,* 53 N. J. Eq. 341, 33 Atl. 483; *McClellan* v. *Filson,* 44 Ohio St. 184, 5 N. E. 861, 58 Am. Rep. 814; *Smyley* v. *Reese,* 53 Ala. 89, 25 Am. Rep. 598. His common law liability is not superseded by statutes enlarging the liability of the wife and her estate. *Vose* v. *Myott,* 141 Iowa 506, 120 N. W. 58, 21 L. R. A. (N. S.) 277. The result of making the wife liable is simply to create a double liability. When they are treated as family expenses, it is well settled that such charges paid by either husband or wife cannot be recovered from the other or from the other's estate. *Johnson* v. *Barnes,* 69 Iowa 641, 29. N. W. 759; *Courtright* v. *Courtright,* 58 Iowa 57, 4 N. W. 824; *McCartney* v. *Carter,* 129 Iowa 20, 105 N. W. 339, 3 L. R. A. (N. S.) 145. The majority opinion declares it to have been the intention of the legislature in § 3347 to make the estate of the wife primarily liable. They cite with approval the case of *Constantinides* v. *Walsh,* 146 Mass. 281, 15 N. E. 631, 4 Am. St. Rep. 311. It would seem, however, in view of the above well settled principles, as was pointed out by McCLAIN, J., in his dissenting opinion, that their intention might have been merely to prefer claims which may be presented for expenses of last sickness and funeral over claims for other debts.

GAS COMPANIES—RIGHT TO WITHDRAW FROM MUNICIPALITY.—The East Ohio Gas Company was incorporated for the purpose of producing, purchasing and acquiring natural gas and transporting the same to certain towns and cities named therein, one of which was the city of Akron. The Gas Company obtained consent from the city by ordinance to lay down its mains and pipes in the streets and alleys, the ordinance providing the rate to be charged for gas for ten years, but it was entirely silent as to the length of time during which the gas company might exercise the privilege granted. At the end of the ten years the council of the city established a rate which was not satisfactory to the company and the latter determined to discontinue business there. The city sought by injunction to restrain the company from shutting off or withholding any gas from those it had been serving. The court of common pleas granted a perpetual injunction and the circuit court on appeal made a similar order. Reversed. *East Ohio Gas Co.* v. *City of Akron,* (1909), — Oh. St. —, 90 N. E. 40.

There is nothing in the charter which will compel the company to operate in Akron. The privilege conferred is of producing and transporting gas to each or all of the places named or described and, if to any, then in the manner described. The city cannot compel the company to make gas or to suffer the gas which they do make to be used. *Norwich Gas Light Co.* v. *Norwich City Gas Co.,* 25 Conn. 19; for the distinction between a gas company and a bridge or ferry company see, *Charles River Bridge* v. *Warren Bridge,* 11 Pet. 420. In the absence of limitations as to time, the termination of the franchise

is indefinite, and to preserve mutuality in the contract, the franchise can continue only so long as both parties are consenting thereto. The city can regulate the price to be charged for gas as long as the company continues to do business in that city, but this is by virtue of the statute and not by virtue of the contract, *Gas Light Co.* v. *Zanesville,* 47 Ohio St. 45, 23 N. E. 60. At the expiration of a franchise the mains, pipes, etc. belong to the original owner and the city cannot authorize another company to take possession of them even on payment to the first company of their fair value. *Cleveland Ry. Co.* v. *Cleveland,* 204 U. S. 116, 27 Sup. Ct. 202, 51 L. Ed. 399. When a corporation accepts the benefit of a franchise with knowledge of its termination, it cannot complain, when the city insists that the termination of the contract be observed, that such termination may affect the value of its property. *Cedar Rapids Water Co.* v. *Cedar Rapids,* 118 Iowa, 234, 256, 91 N. W. 1081; *Skaneateles Water Works Co.* v. *Village,* 161 N. Y. 154, 55 N. E. 562, 46 L. R. A. 687; after the expiration of its franchise the Cincinnati Ry. Co. continued to occupy the streets by the express consent of the board of public works yet the court held the defendant a mere trespasser. *Cin. Ry. Co.* v. *Cincinnati,* (Ohio), 44 N. E. 327. After the expiration of its franchise the company is entitled to remain in possession of the streets such a reasonable time as will allow it to remove its mains and pipes therefrom. *Cedar Rapids Water Co.* v. *Cedar Rapids,* supra. In the principal case the court held that the ten year agreement as to the price of gas having expired, the city, under its power of regulation might impose new conditions as to price, and the gas company might accept or reject these. If the company finally refuses to comply with the conditions it necessarily incurs the penalty of forfeiture of its franchise to serve the people of the city, but it may remove its equipment without interference on the part of the municipality.

HUSBAND AND WIFE—COMMUNITY OR SEPARATE PROPERTY—PRESUMPTION.—Appellant, Mrs. Lee, owning $6,500 as separate property, contracted to buy land for $3,200, paying $640 cash and giving personal notes for the balance. She made two payments from her separate funds, then sold the land for $6,400. A deed to the vendee was deposited in a Spokane bank in escrow. Against his wife's wishes, Lee joined in this deed. Vendee completed the payments and paid the balance into the bank. Respondent garnished this fund to satisfy its judgment against Lee. Appellant intervened, claiming principal and profits were her separate property. *Held,* the entire fund was the wife's separate property, not subject to the husband's debt. *United States Fidelity and Guaranty Co.* v. *Lee* (1909), — Wash. —, 107 Pac. 870.

The presumption is that property acquired by either spouse during marital relation is community property. *Succession of Graf,* — La. —, 51 South 115; *Booker* v. *Castillo,* 154 Cal. 672, 98 Pac. 1069 (with statutory exceptions). But this presumption may be rebutted. *Barr* v. *Simpson,* — Tex. Civ. App. —, 117 S. W. 1041; *Brown* v. *Lockhart,* 12 N. M. 10, 71 Pac. 1086. This doctrine is well established, and certainly ought to work out equitable results in most cases. But in applying the rule, different courts have reached conclusions not always harmonious. Compare holding in *Barr* v. *Simpson,* supra,